

REMARKS/ARGUMENTS

Claims 29-43 remain in the application. Claims 1-26 were cancelled in a prior response. Claims 27-29, 34 and 39 have been amended. In the Office Action, claim 28 was rejected for the being dependent upon a cancelled claim. Claim 28 has been amended to depend from pending claim 27.

Claims 27-29, 34 and 39 were rejected under 35 USC 103(a) as being unpatentable over Fredregill (WO 01/86545) in view of Bachman (US 6,895,386). The Examiner argues that Fredregill discloses the claim limitations: setting a work shift requirement, identifying employee productivity in excess of the work shift requirement and assigning the employee a point value equal to the excess of the work shift requirement. For all of these limitations, the Examiner cites page 17, lines 1-20 of Fredregill, which has been reproduced below.

The interactive application validates that the desired behavior or goal has been reached. The behaviors may include high performance, completion of online or offline training courses, completion of a specific work goal, employee referrals, exemplary attendance, or a special effort expended to solve a problem or acquire a new client. Events such as a service anniversary may also trigger the issuance of rewards. Upon confirmation of the engagement event or behavior, the employee engagement/incentives application will format and transmit a point issuance transaction to the online point server hosted by the program administrator, and the account will be credited in real-time. The online point server will return to the employee incentives program host the new balance of the individual's account, which may reflect transactions conducted in the other retail loyalty domains. In the preferred embodiment, the employee incentives system may also generate an email to the employee and other individuals as desired, with an electronic copy of the recognition certificate suitable for printing, along with confirmation of the number of points earned and the new point balance. The preferred embodiment may also trigger an email to the employee's supervisor or the human resources representative apprising them of the recognition if the recognition was submitted from a peer or another co-worker. Another feature of the preferred embodiment allows the employee being recognized to receive an entry in a sweepstakes for a large reward or prize to be awarded at selected intervals.

Fredregill Page 17, lines 1-20, emphasis added.

The applicant respectfully disagrees with the Examiner's interpretation of Fredregill. The applicant submits that the cited section of Fredregill discloses providing points to an employee for the completion of a "specific work goal." Fredregill does not expressly disclose that a specific work goal is other than to say that the work goal contributes to the success of the business. The applicant submits that Fredregill does not disclose the limitation of setting a work shift requirement. Since there is no discussion within Fredregill about a work shift there is similarly no disclosure about "identifying employee productivity in excess of the work shift requirement." While Fredregill discloses awarding points for "specific work goals," the applicant respectfully submits that this is not equivalent to the limitations of setting a work shift requirement, identifying employee productivity in excess of the work shift requirement and assigning the employee a point value equal to the excess of the work shift requirement.

The Examiner also argues that Bachman discloses the limitation "providing a formula for establishing a unit of business equity." Relevant portions of Bachman have been reproduced below:

A co-branded credit card, such as the one shown in FIG. 1, is used in accordance with the present invention when the co-branded corporation 4 (e.g., Company X Inc.) agrees with the card issuing institution 2 to allow customers, particularly share holders in the corporation, to earn incentive points redeemable for stocks in the co-branded corporation 4. Thus, as the customer makes purchases with the co-branded credit card 1, the total dollars spent are converted into incentive points using a formula. The system and the method of the present invention either make stock purchases periodically using the card of FIG. 1, as described in conjunction with FIGS. 6a and 6b, or continuously, as described in conjunction with FIG. 8. When incentive points are redeemed, either the card issuing institution, the co-branded corporation or a combination of the two pay for the stock purchase on behalf of the customer in exchange for redemption of the accrued incentive points.

Bachman, Col. 4, lines 61- Col. 5, line 10, emphasis added.

The applicant submits that Bachman discloses a formula for converting customer purchases into company stock for customers who use a special financial transaction media such as credit cards. The stock for points based upon purchases is an incentive from the financial

company for customers to use their credit cards. The applicant submits that the purchases and awarded points disclosed in Bachman are not related to employees or the work productivity of the employees. While Bachman does disclose that a credit card can be used as an incentive for an employee of a co-branded company, there is no relationship disclosed between a unit of business equity and a time period of work by the employee. The applicant has amended claim 1 to more clearly describe that the invention as providing stock for work productivity of employees by changing the limitation "providing a formula" to include "for a time period for work by the employee."

The applicant respectfully submits that there are no disclosures in Fredregill or Bachman for: a formula for establishing a unit of business equity for a time period of work by the employee, setting a work shift requirement, identifying employee productivity in excess of the work shift requirement or assigning the employee a point value equal to the excess of the work shift requirement.

The applicant also submits that the combination of Fredregill and Bachman is improper. Fredregill discloses an employee reward and redemption program. In contrast, Bachman discloses a credit card customer incentive program. Because the references are directed towards very different users, the applicant submits that the combination of these references is improper. For all of these reasons, the applicant submits that claim 27 is not invalid as obvious over Fredregill in view of Bachman. Claim 28 depends from claim 27 and for the same reasons, the applicant submits that claim 28 is not invalid as obvious over Fredregill in view of Bachman.

Claim 29 was also amended to include the limitation, "providing a first formula for establishing units of business equity for a time period of work by the employees and a second formula for establishing the units of business equity for product purchases by the employees." Claim 29 has also been amended to add the limitations "converting some of the labor points into company stock shares according to the first formula and converting some of the purchase points into the company stock shares according to the second formula." As discussed above in claim 27, the applicant submits that Fredregill and Bachman do not disclose a first formula for establishing units of business equity for a time period of work by the employees or converting some of the labor points into company stock shares according to the first formula. For these

reasons, the applicant submits that claim 29 is not invalid as obvious over Fredregill in view of Bachman.

Claims 34 and 39 are also independent claims. Both claim 34 and 39 were amended to include the limitations “providing a formula for establishing a unit of business equity for the labor points awarded” and “converting a portion of the labor points awarded ... into the company stock shares according to the formula.” For the same reasons discussed above with respect to claim 27, the applicant submits that claims 34 and 39 are not invalid as obvious under 35 USC 103(a) as being unpatentable over Fredregill in view of Bachman.

Claims 31-33, 36-38 and 41-43 were rejected under 35 USC 103(a) as being unpatentable over Fredregill in view of Bachman and further in view of O’Brien, US Patent No. 6,587,831. The Examiner argues that O’Brien is combinable with Fredregill because it would have been obvious to a person of ordinary skill in the art at the time the application was made to know that Fredregill would be motivated to allow employees to bid for work shifts as taught by O’Brien in order to give the employees control over their work loads. The Examiner fails to argue why O’Brien is combinable with Bachman.

The applicant submits that the Examiner’s combination of Fredregill, Bachman and O’Brien is based upon hindsight rather than being obvious to combine by one of ordinary skill in the art. Each of the references are directed towards solving very different problems. As discussed above with reference to claim 27, Fredregill discloses an employee reward and redemption program and Bachman is different because it discloses a credit card customer incentive program. In contrast to both of these references, O’Brien discloses a method for centrally creating a schedule for a group of company employees. The applicant submits that these improvements are not obvious because these claim limitations are very distinct and there are no overlapping disclosures in any of these references. The applicant submits that this lack of commonality of the references is an indication that the references are unrelated and are not combinable.


Claims 31-33 depend from claim 29 and for the same reasons discussed above with respect to claim 29, the applicant submits that the cited prior art does not disclose or suggest all limitations of claims 31-33. Claims 36-38 depend from claim 34 and for the same reasons

discussed above with respect to claim 34, the applicant submits that the cited prior art does not disclose or suggest all claim limitations. Claims 41-43 depend from claim 40. For the same reasons discussed above with respect to claim 40, the applicant submits that the cited prior art does not disclose all limitations of claims 41-43.

The applicant respectfully requests that a timely Notice of Allowance be issued in this case. The Examiner is encouraged to call the undersigned if there are any questions or comments at (415) 705-6377. The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication or credit any overpayment to Deposit Account No. 04-0822.

Respectfully submitted,

Dated: _____

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